

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAWNE LULEFF, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.; COLUMBIA
FUNDS SERIES TRUST f/k/a NATIONS FUNDS
TRUST; WILLIAM P. CARMICHAEL; and
BANK OF AMERICA CORPORATION,

Defendants.

Case No. 06-CV-1435 (JGK)

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed Affidavit of Andrew B. Messite, sworn to October 2, 2007, the exhibit annexed thereto and the accompanying Memorandum of Law, defendants Bank of America, N.A. and Bank of America Corporation will move the Court at the United States Courthouse, 500 Pearl Street, Room 1030, New York, New York 10007-1312 at a date and time to be designated by the Court, for an order, pursuant to Federal Rule of Civil Procedure 12(b)(1) and/or (6), dismissing plaintiff's Second Amended Complaint, along with such other and further relief as the Court deems just, proper, and equitable.

Dated: New York, New York
October 2, 2007

REED SMITH LLP

By: 

Andrew B. Messite (ABM 3748)
599 Lexington Avenue
New York, NY 10022-7650
Telephone: 212.521.5400
Facsimile: 212.521.5450

and

To: Daniel Cobrinik, Esq.
2 Grand Central Tower
140 East 45th Street, 25th Floor
New York, New York 10017

Attorney for the Plaintiff

REED SMITH LLP

Gregory B. Jordan
Mary J. Hackett
Sharon L. Rusnak
435 Sixth Avenue
Pittsburgh, PA 15219
Telephone: 412.288.3131
Facsimile: 412.288.3063

Attorneys for the Defendants Bank of
America, N.A. and Bank of America
Corporation

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DAWNE LULEFF, on behalf of her minority daughter
DESIRE COBBLE and all others similarly situated, :

Plaintiff, : 06 CV. 1453 (JGK)

-against- :

BANK OF AMERICA, N.A., et al., : AFFIDAVIT OF
 : ANDREW B. MESSITE

Defendants.

-----X
STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

ANDREW B. MESSITE, being duly sworn, deposes and says:

INTRODUCTION

1. I am a member of Reed Smith LLP, attorneys for defendants Bank of America, N.A. and Bank of America Corporation (collectively, "Bank of America"). I am fully familiar with the facts and circumstances herein and submit this Affidavit in support of Bank of America's Motion to Dismiss, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

2. More specifically, and as fully detailed in the accompanying Memorandum of Law, Bank of America seeks dismissal of all claims in the Second Amended Complaint. First, the Securities Litigation Uniform Standards Act of 1998 ("SLUSA") preempts every claim, warranting dismissal. Second, if this Court decides not to dismiss Plaintiff's claims pursuant to SLUSA, then the Court should dismiss Plaintiff's claims for lack of subject matter jurisdiction because Plaintiff's claims fall within the jurisdictional exceptions to the Class Action Fairness

Act and, accordingly, there is no basis for this Court to have original jurisdiction over Plaintiff's claims.

THE RELEVANT DOCUMENTS

3. This Affidavit is primarily submitted to provide the Court with a single document referenced in the accompanying Memorandum of Law. Annexed hereto as Exhibit 1 is the Luleff Authorization dated November 9, 2001.

WHEREFORE Bank of America respectfully requests that its Motion to Dismiss is granted, along with such other and further relief as the Court deems just and proper.


ANDREW B. MESSITE

Sworn to before me this
2nd day of October, 2007.



Notary Public

GIL FEDER
Notary Public, State of New York
No. 02FE5004311
Qualified in Westchester County
Commission Expires Nov. 16, 2010

Co-fiduciary account name (the "Account"): THE DESIRE COBBLE SUPPLEMENTAL NEEDS TRUST
 Account #: 50-01-100
 Bank of America, N.A. ("Bank")

Disclosure for Investment in Nations Funds

Nations Funds comprises a family of mutual funds (the "Funds") for fiduciary and non-fiduciary accounts. We may invest assets of the Account in the Funds only with your concurrence in accordance with the Account's governing document. We believe that investment in the Funds will provide the Account with levels of diversification and liquidity that investment in individual securities may not provide.

Wholly or partially owned subsidiaries of Bank of America Corporation ("Service Providers") provide various services to the Funds, for which they are compensated. For example, NationsBanc Advisors, Inc. is the investment adviser for each of the Funds. The Service Providers may also act in other capacities, including without limitation investment sub-advisor, custodian, transfer agent, sub-transfer agent, administrator, shareholder servicer, interfund lending services, and fund accountant. In the case of certain Funds, advisors that are not subsidiaries of Bank of America Corporation provide investment sub-advisory services and, for those services, receive a portion of the advisory fees paid by those Funds. The accompanying Nations Funds Fee Disclosure Statement and prospectuses describe the various fees paid by each Fund and identify the recipient of those fees.

The fee paid by the Account to the Bank will be reduced (but not below zero) by the Account's pro rata share of the investment advisory fees paid by the Funds to the Service Providers; provided, however, that the amount of the reduction will be based on Bank of America Corporation's percentage ownership of the Service Provider. From time to time, the Bank may also elect to reduce the Account's fees in recognition of amounts paid by Nations Funds for services other than investment advice (such as administrative services), but it is not obligated to do so, and the amount of any such fee reduction may vary. The Account will not be charged a sales "load" for buying or redeeming Fund shares described in the accompanying prospectus.

Approval

I acknowledge receipt of the current prospectus for the Funds and a Nations Funds Fee Disclosure Statement. As co-fiduciary for this account, I understand that the Service Providers will be paid investment advisory and other fees by the Funds. I approve the method of reducing the investment management fees paid to the Bank by the Account. I understand and agree that the Bank is not required to reduce the Account's fee on account of the compensation paid by the Funds for services other than investment advice. The Bank will supply me annually with a prospectus, which will disclose the maximum rates of compensation that the Service Providers may earn for services rendered to the Funds.

Subject to any additional approval by me or others that may be needed under the terms of the trust or local law regarding co-fiduciary actions, I authorize the Bank to use any Fund described in the prospectus to further the Account's investment objectives. When additional mutual funds are added to the Nations Funds family, I will be given a current prospectus containing information about such funds and have the opportunity to approve investment in such funds.

Date:

11-9-01

Doreen C. Lulefs
 Signature

Nations Funds and other mutual funds are not FDIC insured and are not obligations of, endorsed by, deposits in, or guaranteed by Bank of America, N.A. or any of its affiliates. Investments in mutual funds and other investment products involve investment risks, including possible loss of principal invested.